STATE OF WASHINGTON
CONSERVATION COMMISSION
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Efficiencies Action Items

DATE: March 16, 2006

TO: Mark Clark, Executive Director

FROM: Jon Culp, IEGP Manager

RE: **EFFICIENCIES ACTION ITEMS FOR WSCC MEETING IN MARCH 2006**

The following is a summary of major policy revisions that staff recommends for approval by the members. These revisions to the existing policy are a culmination of about twelve months of brainstorming, negotiating, and polishing by agency staff, participating district staff, steering committee members, and interested parties and are agreeable by all. It is further recommended that the members view this action as on the sum of its whole instead of as separate actions.

- Efficiencies and Trust program processing timeline. (This item is a reword of the same item passed May 05) *Some wording changes were necessary to create cohesion with the rest of the policy document.*
- Pre contract reimbursables. (This item was approved at the May 05 meeting in concept form) *Clarification text revision was made to this policy.*
- Five percent redefined. *This policy has been redefined to allow some operational flexibility and program expansion into some areas within the state were the existing 5 percent rule makes participation prohibitive.*
- Cultural Resources. *This policy allows for the performance of the cultural resource inventory to be an eligible cost toward a cost share agreement. It further allows for this expense prior to the landowner entering into the cost share agreement but not before the project being deemed eligible.*
- SEPA processing. *This policy is necessary to help clarify the roles of each agency with regard to the SEPA process.*
- Public Notice for Trust. *This policy is necessary to clarify the financial responsibility and lead will be for this function.*
- Irrigation Water Management for ineligible project assessments. *This policy will allow districts to convert existing data that would be collected on a*

project prospect to be utilized in the event that that project became ineligible for program cost share funding. The data could be converted into an Irrigation Water Management Plan utilizing Efficiencies Technical Assistance funds for the few man-hours that would be required to perform this conversion.

- 100 percent funding with State Money. *This policy mirrors one approved for Efficiencies drought response where the program would coordinate 100 percent funding for efficiencies projects. However, this provision would focus its efforts on a State level identified stream(s) were collected science and local information would be used to identify the highest need and the greatest outcome. Landowners would be offered 100 percent funding in exchange for 100 percent of the net water savings in perpetuity.*
- Target Stream Protocol. *This policy is the base protocol that allows for the used of the 100 percent funding mentioned above. Because the responsibility of managing public funds increases with the increased funding amount, the level of public benefit must be managed more closely through a tightened protocol.*
- CID designer eligibility vs. State Engineer. (This item passed May 05, but reworded in this proposal) *Again, wording revisions for clarification were necessary here.*
- Reference Documentation. *This policy transfers this requirement from the old Eligibility Form where it was located prior to the adoption of the Consolidated Application Form to the policy document.*
- Other miscellaneous clarifications. *Too many wording revisions to list here separately. All other changes to the document are highlighted and underlined or struck-through and do not constitute a policy topic as a stand alone.*

As stated previously, these issues have been discussed with participating conservation district staff and their comments have been incorporated into this recommendation. These policies will work to polish some of the rough areas in the program and foster a smoother operation for our future. Further, these changes are the direct result of the attitude of adaptive management that has allowed this program to successfully work to increase stream flow in priority streams in the target areas effectively and efficiently.

Recommended Motion: I move to approve the 01/01/06 version of the Definitions, Guidelines, and Policies document for the Irrigation Efficiencies Grants Program.

Respectfully,

Jon K. Culp
Program Manager, IEGP

Definitions, Guidelines and Policies

Irrigation Efficiencies Grants Program

v. 01/01/06

Because of the complexity of this program and the desire for effective and efficient delivery, some portions of some policy sections contained herein may seem redundant.

The Efficiencies and Trust processing timeline continuum

Because RCW 90.42 030.(2) states: "If the public benefits to be obtained require conveyance or modification of a water right, the recipient of funds shall convey to the state the recipient's interest in that part of the water right or claim constituting all or a portion of the resulting net water savings for deposit in the trust water rights program. The amount to be conveyed shall be finitely determined by the parties, in accordance with the guidelines developed under RCW 90.42.050, before the expenditure of state funds", much emphasis has been placed on aligning the processing of the resulting trust water right and the application for cost share for this program. The combined effort has generated a consolidated application form, which replaces the Efficiencies Program's Project Eligibility Form and the Trust Water Rights Program's Trust Water Rights Form. The processing of this form will happen simultaneously within both programs so that the Report of Finding for the Trust Water Right and the cost share agreement will be signed together. Therefore, the anticipated timeline resembles this: district markets for and identifies potentially eligible projects, then they do an initial site assessment. Once satisfied that the potential exists for a viable project, they fill out a consolidated application for in its worksheet format and submit it to Ecology's validity and extent investigator and Cc the Commission's Program Manager. Once validity and extent are preliminarily determined, the district will forward the Consolidated Application Form, in worksheet format to the appropriate Ecology regional Trust Water Rights Coordinator. The district will continue to work with the Validity and Extent Investigator, the Trust Water Rights Coordinator, and the Program Manager to solidify the data points, the incidentals, and any questions arising in proposal negotiations between the district, the agencies, and the landowner. A site visit will be coordinated by the district at some point following the receipt of the Consolidated Application Form by the Trust Coordinator. Once validity and extent are tentatively formalized by the Validity and Extent Investigator and the trust coordinator is confident in the trustability of the right based the presented data and subsequent research into the right and the district has forwarded all relevant reference documentation to the Program manager, eligible proposals will be deemed eligible by the Program Manager. The Consolidated Application Form, which up until this point in processing had been treated as a worksheet, is now identified as a final application for processing purposes.The project may then incur expenses toward formal design and cultural resource inventory, per their respective policies.

Pre-contract reimbursables

Once a project proposal has met the requirements for eligibility and been formally, in letter, deemed so by the Commission's Program Manager, the Recipient may incur expenses toward the proposal's strongly anticipated cost share agreement. This provision is ***limited to*** the formal design of the best management practices (see sections on NRCS standards and CID eligibility) *and* the cultural resources inventory/investigation, **only.** It is very important to the Commission and its program to understand the nature and ramifications of the results of each of these activities prior to entering into the cost share agreement with the potential Recipient.

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5% redefined

Culminating in an extensive discussion in January of 2005, the 5% rule will further be clarified and/or defined here. Because of the collective benefits of substantial flow increases in some mainstem rivers within the 16 drought critical basins, and because the cooperation of only one landowner diverting water on an average farm is insufficient to save an instantaneous water quantity equal to 5 percent of the lowest month mean monthly flow when that flow is greater than 50 cubic feet per second, some adjustment in securing the 5% has been adopted. Once the administrating conservation district has determined the lowest month mean monthly flow in the potentially affected reach, the district may work with one landowner, whose project will save some sizeable percentage of the 5% quantity, provided that the district provide the Technical Advisory Committee for their review and consideration, letters of intent from neighboring farms and farmers, whose prospective projects would enhance instream flows in continuity with the original cooperator/recipient and whose quantity would collectively satisfy the 5% rule.

Cultural Resources (don't forget to push tribes as partners here)

A cultural resources inventory is required on all projects funded by this program. The performance of a cultural resource inventory is a necessary and responsible activity to undertake when a potential site will be disturbed, especially along natural surface water sites. Because of the importance of this planning activity and the potential ramifications the results may have on the cost and layout of the installation of the best management practices that comprise the project, the activity has been deemed a cost eligible practice under this program. Because of the nature and scope of the activity and as mentioned in the Pre-contract reimbursables section of these policies, this activity can be performed prior to the parties entering into the cost share agreement and the expenses will be reimbursed through that future agreement. The reimbursement will only be made through the cost share agreement. If for some reason the agreement in not entered into after the expense of the inventory has been incurred, or if the inventory is performed prior to the proposal being deemed eligible by a letter from the Program Manager, no reimbursement will be made to any party through this program.

SEPA

A SEPA checklist will be filled out by the proposing conservation district technician or a subcontractor providing technical assistance on behalf of the conservation district for any single project or a series of related projects that involve a water supply of greater than 1 cubic foot per second of surface water, including a mix of surface and ground water sources, or 2,250 gallons per minute of ground water. The checklist will be submitted to the relevant Ecology regional Trust Water Rights Coordinator for processing prior to a designation of eligibility will be issued. The Trust Water Rights Coordinator will be responsible for processing the checklist and publishing it if need be. The publication, where required, will be paid for by the Department of Ecology.

Public Notice for Trust

The Public Notice for processing of the water right associated with the project into the Trust Water Rights Program will be performed by the Department of Ecology Regional office with jurisdiction of the watershed where the project is being proposed. The publication of the public notice will occur after the Coordinated Application Form is recognized as an application rather than a worksheet and prior to the completion of a report entering any portion of the water right into trust. This publication will be paid for by the Department of Ecology.

IWM for ineligible assessments

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Where seemingly viable project proposals have been pursued by a landowner with the expectation of future program eligibility, and where data has been collected in an effort to determine program eligibility in this program, and where the collected data eventually indicates that the project is not eligible for the program, the district is authorized to create of have created an irrigation water management plan, using technical assistance funds only, where the expenses of the creation and implementation of the plan does not exceed 350 technical assistance dollars. No single district may implement this provision more than 15 times per fiscal year. This policy does not authorize new IWM plans for new cooperators who do not expect to enter into the Efficiencies program. This policy is created to ensure an environmentally beneficial deliverable from each cooperator entering into the Efficiencies program regardless of eligibility.

Each IWM plan will be documented by the providing district and must be approved by the Commission's program manger prior to its compilation. For approval for the use of this provision by the district or its subcontractor, the district will provide the Program Manager with an electronic copy of the site assessment, to include the tributary potentially affected by the plan. An electronic copy of the final plan will also be forwarded to the Program Manager for tracking and filing purposes. This provision does not provide funding for, but encourages the use of site installed soil moisture sensing equipment.

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100% funding with State Money

This policy authorizes the use of 100% funding of any given project with State Funds regardless of the source. In the event that 100% financial assistance if offered using State funds, the landowner must agree to transfer 100% of the net water savings to the trust into perpetuity. When utilizing this policy, a stipulation may be written into the Trust Water Rights document that allows for some flexibility and final negotiation of the actual net water savings/trusted amount prior to the fifth irrigation season following the beginning date of the Trust Water Right.

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Target Stream Priority Protocol

The TSPP is a joint pilot effort between the Commission, Ecology, Fish and Wildlife, and the participating conservation districts to target streams at the state level. This protocol will set a new standard by which a district may administer 100% funding of qualifying projects within an identified watershed. This pilot will be fund 85% of the project cost through the Efficiencies program for the installation of the Best Management Practices. The pilot will expend a total of Water Acquisition money not to exceed the amount equal to 15% of the total cost of the installation of cost eligible BMPs for the acquisition of that portion of the water right not obligated through the Efficiencies program and purchase them in perpetuity. All Efficiencies policies except for those directly related to the standard eligibility criteria will apply to all TSPP projects.

CID designer eligibility vs. state engineer

When the design of a given project consists of the BMPs and their incidentals between the intake of a pump and the nozzle of an application system and where a Certified Irrigation Designer (CID) provides composite plans from pre-designed manufacturer's specifications, an engineer's decision is not required. For conveyance projects (piping ditches, distribution points, re-regulating reservoirs, etc.) or application projects (sprinkler systems) where a CID is not available or *no* plans based on composite plans from pre-designed manufacturer's specifications are available or require modification beyond the manufacturer's specs, the

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requirement of a State Certified Engineer or an NRCS technician or engineer with job approval authority for irrigation design will remain. Proof of qualification and design must be provided and verified by the district.

Who is eligible?

By appropriation, the program is limited by geography to sixteen Water Resource Inventory Areas (WRIA's): 1, 7, 8, 9, 10, 12, 17, 18, 32, 35, 37, 38, 39, 45, 48, and 49. There are nineteen conservation districts serving the private landowners within those sixteen WRIAs. These nineteen conservation districts (numbers 1, 2, 4, 5, 7, 9, 10, 19, 20, 28, 29, 30, 32, 43, 44, 45, 46, 47, and 48) with land in the eligible watersheds may apply for grants to assist eligible irrigators.

Eligible irrigators must have a legal water right, permit, or claim actively used for beneficial purposes. The priority date of the water right must be prior to July 28, 1991.

Family farms are highest priority for funding. Both surface and groundwater withdrawals are eligible. Each project must demonstrate a benefit to stream flow and salmonid survival.

How will grants be awarded to conservation districts?

The grants-to-districts program is competitive. Grants will be awarded based on demonstrated need and environmental benefit.

No single grant applicant will receive more than 25% of the available financial assistance funds in a given fiscal year.

What are the Project Eligibility Guidelines?

The Project Eligibility Guidelines is a checklist worksheet, which outlines the environmental benefits criteria of each irrigation improvement project. The Guidelines also incorporates a district project ranking section that allows for local, sight specific factors to be used for project ranking at the district level. A threshold of minimum project requirements is necessary for the project to qualify for funding. Because the required criteria may fail to accommodate important local, site-specific resource concerns, worthy projects not meeting the threshold may be submitted for consideration by the Technical Advisory Committee, on a case-by-case basis. The lease length and cost share rate will be determined by, and negotiated with the landowner and reflected on the Consolidated Application Form.

Project Requirements with No Exceptions:

An eligible project is required to create a "net water savings" that can be expressed as both an instantaneous quantity (cfs, gpm) and an annual volume of water (acre-feet) made available

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through the installation of the proposed BMPs. Each major component (eg. Center pivot, conveyance pipeline, pond lining) must have a separate and relevant water savings associated with it. The water savings associated with each practice should also show a justifiable contribution to the overall water savings with regards to the cost of said BMP relative to the total cost of the project. Minor components would be those incidental but required components such as, but not limited to, flow meters and fish screens and do not require a separate and relevant water savings because of it's installation.

The projected water savings must be obtained from reduction in water use within the limits of a valid water right in existence on July 28, 1991, sufficient in seniority it is not regulated against in average rainfall years and that it creates a primary reach (point of diversion to ultimate point of return) of sufficient public benefit to warrant the expenditure of public money, thereby creating a valuable trust right that Ecology can regulate for within the primary reach.

The "net water savings" must be trustable. The amount of water conserved can be characterized by an instantaneous and a total annual quantity of water. However, if the saved water is a conveyance water (return flows) it can be characterized by the instantaneous amount attributed to the primary reach with the total annual quantity undetermined.

The implemented project **must** benefit anadromous salmonid fish species. To meet the fish benefit requirement of this program, a project must meet or exceed one or more of the following:

- Increase the flow in streams with a lowest month mean monthly flow of *less* than 50 cubic feet per second in the reach directly below the point of diversion at a time, quantity, and quality, in which benefits to salmonids are realized, or expected through concurrent restoration efforts. **The primary benefit of the implementation must be through an increase in flow.**

- A minimum of five (5) percent flow increase (may be cumulative with other projects) in streams with the lowest month mean monthly flow *greater* than 50 cubic feet per second in the reach directly below the point of diversion at a time, quantity, and quality, in which benefits to salmonids are realized, or expected through concurrent restoration efforts. The primary benefit of the implementation **must** be through an increase in flow.

Other significant and measurable benefits to salmonids due to project implementation, such as a removal of fish passage barriers, or elimination of "push-up" diversion dams, or other benefits as determined by a fish biologist familiar with limiting factors of salmonids within the stream that the project is to be implemented. Again, the primary benefit of the implementation **must** be through an increase in flow.

The program currently considers the creation of access to habitat where none or little existed prior to implementation as potentially viable primary benefit for eligibility determination—proof must be undisputable.

Project Requirements with Possible Exceptions:

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¶
The "net water savings" must be trustable. The amount of water conserved can be characterized by an instantaneous and a total annual quantity of water. However, if the saved water is a conveyance water (return flows) it can be characterized by the instantaneous amount attributed to the primary reach with the total annual quantity undetermined. The right must valid and the saved water portion of the right must be shown to have been beneficially used within the last 5 years.¶

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- The project *will* implement "on-farm" improvements to directly benefit a Family Farm as defined by RCW 90.66.040(1). (Project proposals from individual farms served by formal irrigation districts are considered "on-farm" projects and do not require an exception as would an infrastructure improvement proposal by the irrigation district itself.)

- The project diversion is located on or is in direct continuity with a "high" or "medium' priority stream as identified in the Water Acquisition Program Publication #03-11-005. (This is also accessible on the ECY website http://www.ecy.wa.gov/biblio/0311005.html .)

Only ***one*** of the following exceptions to the above requirements will be considered for any one project proposal. Projects requesting an exception to one of the two exemption-eligible requirements listed above must be deemed eligible by a quorum of the TAC.

A) Projects in which a private irrigation company or corporation is the cost share recipient must be located in, or diverting water from a high or medium priority stream reach. The benefits of the project to salmonid species will be evaluated on a case-by-case basis.

B) Projects in which an irrigation district is the cost share recipient must be located on, or diverting water from a high or medium priority stream. The benefits of the project to salmonid species will be evaluated on a case-by-case basis. The following conditions must also be met:
   i) Project applicant must have the written approval of the Irrigation Districts governing board.
   ii) Concurrent and similar funding opportunities from state and/or federal agencies within the sub-basin of the proposed project are either not available, or are exhausted.

C) Project proposals diverting water from "low" or un-prioritized streams (Pub. #03-11-005) can be considered if:
   i) The stream rating is changed to high or medium by Ecology and WDFW through consideration of whether:
      (1) additional salmonid species have recently been found present in the stream
      (2) the status of the fish species present has changed
      (3) Passage barriers to salmonids were recently removed or if there are plans, funding, and target dates for barrier removal in the near future
      (4) the project provides salmonid passage to habitat previously inaccessible
      (5) the proposed project is located on a tributary of a stream designated as being of medium or high priority in Publication #03-11-005 and benefits the priority stream reach
      (6) there have been any recent salmonid enhancement projects or other recent changes in habitat conditions within the sub-basin which might affect the priority of the stream
   ii) Or, if the landowner is willing to permanently place the conserved water into the Trust Water Rights Program, and one or both of the following apply:
      (1) there are ongoing flow restoration activities in the sub-basin
      (2) there is a high level of expectation for cooperation by other landowners in the sub-basin. The expectation for cooperation can be based on past and/or current commitment and participation in resource conservation activities. Some examples might be: a diversion screening program, development of a Resource Management Systems plan, a comprehensive irrigation district management plan, or other activity as defined by the coordinating conservation district. Increase in flow must be the primary benefit of implementation.
   iii) Or if the net water savings can be conveyed to a high priority stream for use as instream flows.

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(1) The net water savings is trustable in the high priority stream
(2) Negotiations can be contractually obligated to between the water purveyor and WDFW as to the timing and quantity of the high priority stream outtake on a yearly basis.

What is the Consolidated Application Form?

The Consolidated Application Form is a document that accompanies the reference documentation in order for the Program Manager to determine formal eligibility, the Ecology representative to determine the validity and extent of the relevant water rights, and the Ecology regional Trust Water Rights Coordinator to investigate and determine the trustability of the resulting net water savings. The document is used as a worksheet while under review and during completion of preliminary investigations. The document is a formatted compilation of all of the pertinent data that has been collected, both in field and in research by the landowner, the conservation district or designated representative, agency personnel and any other relevant source, to help determine if a proposed project meets the intent of the program as set forth in the eligibility criteria. Once all pertinent data is identified by participants and contained within the document, the worksheet is treated as an application for the purposes of processing. The Conservation Commission Grants Program Manager will ensure that all participants are informed as to when the worksheet is to be treated as an application. For projects, approved by the Program Manager as eligible, to proceed to contract, a completed final copy of the Consolidated Application Form is attached to the cost share agreement prior to submitting the contract for signature. The Consolidated Application Form is therefore incorporated into the agreement.

Reference Documentation

The documents that are required to be submitted to the Program Manager in order for a determination of eligibility. These documents include, but may not be limited to the following:

- water savings methodology and documentation,
- proof of irrigation season length, water right documentation-- affidavit of season length by landowner, district, or Co., pump power records, etc.
- proof of historic/beneficial use-- the baseline for saved water determination cannot exceed the amount proven to have been historically and beneficially used within the extent of the valid water right, this could include pump records, power records, landowner affidavit, FSA crop records, meter data, etc.
- documentation referencing the seniority of the right in relevant reach ((ECY regional water resources can assist)eg. priority listing of water rights in the defined reach, adjudication priority listing, etc.)
- listed species documentation--(need species and critical timing portions of published documentation like an LFA, SASSI, or other WDFW approved documentation)(*I need one copy for each separate application*).
- project cost estimation—this could be an itemized bid from a contractor, an engineer's report, a vendors estimation, etc.
- Detailed conservation map--detailing existing and proposed infrastructure

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of a quality and scale so that the entire project area and the proposed BMPs are easily identifiable

How is eligibility determined for a proposed project?

Once a district has identified a project as a local priority, the district will ensure that the requirements as outlined in section I of the Project Eligibility Guidelines are met or exceeded. Once district verification has occurred, district staff will forward the Consolidated Application Form with the applicable reference documentation to the Commission's Program. The Consolidated Application Form will also be sent to the Ecology validity and extent researcher. Once a preliminary validity and extent can be determined, the Consolidated Application Form will be forwarded to the relevant Ecology regional Trust Water Rights Coordinator. Once the validity and extent has been formalized by Ecology and the trustability seems feasible, the Program Manager will make a determination of eligibility. If a determination is affirmed, an eligibility letter will be sent to the district identifying the date of eligibility and acknowledging the project's contribution to the program's efforts. . This letter may also confirm that the application, previously treated as a worksheet can be now treated as an application.

Those project proposals not meeting all of the eligibility requirements, but addressing substantially measurable salmonid benefit and having a high level of district support, may be submitted to the Technical Advisory Committee for consideration. All reference documentation must be available prior to Committee consideration.

Eligibility will not be determined until the Commission's Program Manager receives a water rights validation letter from the Department of Ecology.

What is the Technical Advisory Committee (TAC)?

The TAC is a finite committee of technical experts assembled to consider exceptions to the eligibility rules for project eligibility determination. Because of the need for the safeguarding of public funds is a key foundation of District and commission programs, there is a high level of scrutiny involved with the consideration of all projects, but especially on those whose measurable environmental benefit may not appear to match our eligibility criteria. Projects may be deemed eligible when an undeniable case of measurable ESA fish species benefit can be proven. It is the responsibility of the District representative to present all relevant data to make the case for the proposal in question.

Committee members are: The chairman of the committee--WSCC IEGP Manager, an Ecology representative whose department duties include water right investigation for the IEGP, a WDFW representative—senior fish biologist with sufficient authority to make decisions in the field. When the proposal in question involves an Irrigation District, an Ecology representative for the Ref. 38 program will be an invited member. When there is a question of the proposed infrastructure of the proposal, the NRCS state irrigation engineer will be an invited member. The district technician offering the proposal will always be a member. No other individuals will be present at a TAC meeting without an invitation by the chairman and consent of a majority of

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the core members. Any member may propose the inclusion of an outside party to the chairman who will contact the other members for consultation. The integrity of the structure of this committee is paramount to its ability to making objective decisions based on the science and data presented and available.

What are the District's responsibilities for getting a project approved eligible?

The Consolidated Application Form is filled out by the participating district to determine initial eligibility in the program. Make a copy of the Form and all relevant reference documentation and submit them to the Commission's Program Manager for project eligibility approval. Because this same form is used in the data collection and negotiation phase as a worksheet, it must be converted to an application by checking the appropriate box at the top of the Form and have the application signed by the landowner authorizing the Trust Coordinator to publish the trust portion for public comment. An eligibility letter from the Commission must be received at the District prior to cost eligibility toward an imminent cost share agreement within this program. The eligibility letter will identify the eligibility date, after which cost eligible expenses for design and cultural resources only are reimbursable with financial assistance dollars at the agreed upon cost share rate for that project.

Note: No project incurred expenses will be reimbursed with financial assistance funds without a signed and valid cost share agreement.

What are the irrigator obligations?

The irrigator must assist in establishing the history of water use for the irrigation purpose and in the identification of the water rights under which irrigation is accomplished.

The irrigator has the responsibility to install a more efficient irrigation system and to manage it to maximize water conservation and salmonid benefit using an irrigation water management plan.

The irrigator is required to put a portion of the "saved water" (total project water savings) resulting from the irrigation improvement into the state's trust water rights program for instream flow as part of their cost share contract. The portion put into trust must be equal to or greater than the percent of cost share investment from this grant program. The Trust process is initiated by the irrigator submitting an accurately completed Consolidated Application Form, completed in conjunction with the conservation district to the Program Manager and the Trust Water Rights Coordinator.

Participating irrigators must also:

- Begin to measure their water usage as soon as hardware is installed;

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¶
Reference documentation that needs to accompany the Project Eligibility Form and the Executive Summary include, but need not be limited to: a conservation map (detailing existing and proposed infrastructure) of a quality and scale so that the entire project area and the proposed BMPs are easily identifiable; Saved Water analysis (quantification and methodology) the baseline for saved water determination cannot exceed the amount proven to have been historically and beneficially used in the last five years (by interpretation of the law); copy of the water right; Irrigation Season verification (affidavit of season length by landowner, district, or Co., pump power records, etc; Verification of listed species (need species and critical timing portions of published documentation like an LFA, SASSI, or other WDFW approved documentation)(I need one copy for each separate application); Documentation referencing the seniority of the right in relevant reach ((ECY regional water resources can assist)eg. priority listing of water rights in the defined reach, adjudication priority listing, etc.); and Project Cost Estimation.¶

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- Screen their diversions within twelve months to maintain program eligibility; however, participants may make appeal to the Conservation Commission for a time extension if there are extenuating circumstances in meeting this requirement;
- Agree to compliance inspections when proper notice is given; and
- Give Ecology the option to cross their property to install stream gages.

What is the cost share rate?

Up to 85% of the cost of irrigation efficiency improvements can be paid for through this grant program. No single project can receive more than $312,500 of financial assistance funds.

The remainder of the cost of the improvements is the landowner share. Landowners are generally free to use other grant funds to cover their share. The amount of landowner funding for fish screens may be used as match; however, public agency financial contributions to fish screen implementation cannot be used as match.

The cost share rate will be determined by the landowner and inserted on the Consolidated Application Form. The cost share percentage rate must not exceed the percentage of saved water the landowner is willing to place in the State's Trust Water Rights Program. However, a landowner will be free and should be encouraged to place 100% of the saved water into trust.

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The right holder and/or the district may combine other funding sou5rces with the irrigation efficiency program funding.

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What is the Contract length and Periods of Performance?

The contract length must be at least as long as the expected design life of the installed BMP with the longest design life, as set by NRCS standard. Design life expectancies are found in the local USDA-NRCS Field Office Technical Guide, or FOTG.

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There are several periods of performance relevant to the cost share agreement.

- **Period of Performance – Term of Agreement.** The period of performance for this agreement, in its entirety, begins on the date of project approval as listed on the Project's letter of eligibility. The ending date for this agreement is based on cost share agreement's Paragraphs M (Term of Water Transfer) and N (Term of BMPs). This time period is subject to the minimum contract length rule.
- **Period of Performance – Term of Water Transfer.** The period of performance and the transfer of water rights under this agreement begins on the date of anticipated project installation completion and ends the end date of the contract period of performance, unless terminated sooner as provided in this agreement. At the end of the agreement period, the trust water right shall revert to the Water Right Owner.
- **Period of Performance – Term of Best Management Practices.** The Recipient agrees to manage the best management practices for their design life as identified by

the District and as shown in Section III(E). Further, the Recipient agrees to refund all or part of the cost share assistance paid as a result of this contract, if, before the expiration of each practice design life, the Recipient destroys the approved practice, or voluntarily relinquishes management or title to the land on which the approved practice has been established and the new owner or operator of the land does not agree in writing to properly maintain the practice for the remainder of its lifespan. The amount to be refunded by the Recipient will be prorated by the District, subject to review and approval by the Commission, according to the years of benefit already provided to the State of Washington.

What best management practices (BMPs) qualify for funding?

NRCS FOTG Practice Specifications

- Irrigation Canal (320)
- Irrigation Erosion Control (716)
- Irrigation Regulating Reservoir (552A)
- Irrigation System (441/442/443)
- Irrigation Water Conveyance (428/430)
- Irrigation Water Management (449)
- Pumping Plant for Water Control (553)
- Tailwater Recovery (447)
- Structure for Water Control (587)
- Water Well (642)
- Water Flow Measuring Devices
- Pond Liners (521)

These BMPs must meet the standards and specifications as outlined in the Natural Resource Conservation Service (NRCS) Field Office Technical Guide (FOTG). The Water Flow Measuring Device must also meet the requirements as outlined in the definitions section of the policies.

Environmental and Cultural Resource evaluations directly related to the funded project are cost eligible and considered part and parcel to the above BMPs.

How will “saved water” be determined?

By an NRCS approved method designed and accepted for such practice.
Or by a State licensed Engineer.

The saved water will be calculated based on the proposed improvements in the irrigation water delivery system and the irrigation system efficiency.

Because of the nature of water rights law, the baseline for water savings might not be the face value of the water right. The baseline starting point for water savings determination is based on the historic use of the right. By statute, the period of record for this historic use analysis will be a minimum of the last 5 years. The historic use consists of acres irrigated, instantaneous quantity in gallons per minute or cubic feet per second, annual quantity in acre feet per year, time of use in days or months (irrigation season), and irrigated acreage. The determination of "saved water" requires an accurate accounting of each of these parameters. There are many methods for obtaining this type of data. Some are more accurate than others. Since the system improvements paid for by the irrigation efficiencies funding are intended to return water to in stream use, the program will require the most accurate accounting method practical be used to determine saved water.

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Is there a difference in the saved water determination for ground water diversions?

The burden of proof for the program remains the same—saved water quantity must be finitely determined. Because of the widely varied nature of ground water/surface water continuity, there is no simple process that can be applied across the board. Due to the highly technical nature of making the determination of continuity, the landowner will be responsible for having the continuity professionally determined so that the timing and quantity of the saved water create an environmental benefit sufficient to qualify for the program.

How will water rights information be collected for each project?

Each conservation district must perform or delegate the collection of water rights information.

The following list is a general guideline to assist the districts in collecting the required water right information needed to make an initial evaluation of the validity and extent of the water right associated with the efficiencies request:

1). Basic water right information will be required for all State issued water right documents and rights documented by water right claims. This information is found in the record of all water rights issued by the Department of Ecology and its predecessor agencies.

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A. The Department of Ecology Regional Office needs to know the complete legal description of the property in question and the location of the point of diversion (surface water) or withdrawal (ground water). The WRATS system only lists the point of diversion/withdrawal and not the place of use so an accurate POD location is necessary to research records. WRATS can find limited data if the application, permit, or certificate number is available. These numbers will also allow Ecology to locate the appropriate microfilm records. The applicant probably has copies of his own records which should be supplied to the researcher to verify. If he does not wish to supply the original records Ecology can reproduce the records from application, permit, and certificate numbers.

B. A copy of the application, any associated maps, affidavit of publication, report of examination, permit, proof of appropriation form (if available), and certificate of water right should be provided as a minimum. Ecology should check the WRATS system to ensure that the complete record is made available and that the water right has not undergone a relinquishment, cancellation or rejection process. Ecology personnel should be made aware of the importance of obtaining a complete record of the water right in order to protect the applicant from future repercussions if the water right is determined to be invalid. The reviewer should carefully read the report of findings which should give a fairly detailed description of the project, associated prior water rights, and a discussion of any protests to the filling of the original application. The report of findings should list other water rights that may be a part of this project and possibly include overlapping claims registries. Jim Lyerla with the Department of Ecology will do a complete review of the water right as soon as the project is formally submitted for consideration. I will also be available for an informal (off the record) consultation with the applicant or Conservation District concerning the interpretation of these water rights.

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C. In many instances water rights overlap or are subject to special conditions that may not be readily apparent. Overlapping claims registrations, and other prior water rights, should show up on a WRATS search and must be considered in our evaluation. It is quite possible that multiple water rights will be appurtenant to the project and multiple in the applications for change to trust water rights may be required. The Conservation District should ensure that all of the special conditions are being complied with as these conditions will be enforced prior to acting on the trust applications for change.

D. The Regional Offices are best equipped to evaluate water rights subject to adjudication proceedings. Each office has its experts that deal with these proceedings on a daily basis. I would advise that questions concerning adjudicated water rights be directed to these individuals initially.

How will water right seniority be determined?

Seniority of a right need only be determined in the reach or tributary directly associated with the project's diversion.

Ecology can also conduct water right inventories through the Water Rights Activity Tracking System (WRATS). This is a very useful data base for research into prior water rights in an area or stream segment. It will list active and inactive surface and groundwater rights as well as water right claims in the claims registry. On adjudicated streams it would be advisable to contact the regional office for assistance. Jim Lyerla from the Spokane Regional Office (509-456-3029) will also assist the Conservation Districts in water rights determinations, as well as many other aspects of the program.

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Can both "saved consumptive use water" and "saved conveyance water" be put into trust?

Savings in consumptive use water can generally be put into trust. The circumstances under which conveyance water can be put into trust are more limited. There must be a direct environmental benefit to putting more water in the stream between the point of diversion and the return flow before conveyance water is eligible.

The key questions for putting both types of water into trust are:

1. What protection does the water in trust have against appropriation by other water right holders?
2. What potential impairment to existing water rights can result from the actions taken to protect the trust water right from junior appropriators?

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These issues demand sound research on the water rights in question before proceeding with a cost share contract and application for a water right transfer.

What is the difference in seniority between the "saved water" and the remaining water right?

The "saved water" put into trust is a water right junior to the water right remaining for land application. Therefore, in a drought year, the landowner can attempt to fulfill the remaining "senior" land application right before the trust right gets water.

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What happens to the "saved water" not put into trust?

The "saved water" not put into trust remains a part of the original water right. However, that portion of the original water right that is "saved" and not put into trust, could potentially be in jeopardy to the relinquishment rule and not subject to the protection of the State's water trust program. Saved water may not be diverted, as the system should no longer be able to accommodate it, nor will the landowner's crops require it.

Is completion of the water rights transfer necessary before the cost share can be paid?

No, however, it is necessary for final payment. Partial payments totaling up to 75% of the cost share request may be made at anytime after the contract is signed by all parties (*see How will the grants program work?)*.

How will the grants program work?

General Conservation Commission grant guidelines apply to this program. This policy supplements those guidelines.

The 01-03 biennium agreement was such that: Ecology will reimburse the Conservation Commission for expenses up to $7,850,000. The Conservation Commission will set aside 3% ($240,000) to administer the program. Up to $1,000,000 will be used for conservation districts to provide technical assistance leaving $6,610,000 for financial assistance.

In January 2002, $750,000 has been awarded to conservation districts for technical assistance. Districts who meet their participation quotas, expend all their technical assistance funds, and have additional potential participants waiting will be eligible to apply for additional technical assistance dollars to service those customers.

In January 2003, Ecology granted a one year extension, to June 30, 2004, which increased the administrative withholding by $81,511.

In July of 2003, the state Legislature appropriated an additional $1,000,000 to the program. The legislature also reappropriated unspent funds totaling $5,213,615, bringing our available program amount to $6,213,615 for the biennium. The commission also anticipates an estimated administrative cost of $82,000 for FY 2005. Technical Assistance awards totaling $512,683 for FY2004 and $500,000 for FY 2005 have been allocated to the participating districts.

Program Funding Caps for 03-05 biennium

Technical Assistance	Cost Share
Variable awards based on district workload	$1,250,000/applicant
70% minimum on TA[1]	$312,500/project

The technical assistance funds will be distributed up front to qualified conservation districts. They will use the funds to market the program to farmers and irrigation consultants, complete initial irrigation system inventories, prepare customized lists of alternative irrigation systems and their relative environmental benefits, review and approve designs, project installation costs and quantify potential saved water, and provide water meters education. In some cases, districts will use technical assistance dollars to fund NRCS personnel to design and install the systems. In most cases, professional irrigation consultants will design and install the system improvements using the financial assistance funds.

If a project proposal, submitted with all required documentation, is confirmed eligible by the Program Manager, it can proceed to contract. The documentation serves as an application to enter the net water savings of the project into the state trust water right program. The program

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[1] The applicant must spend at least 70% of the technical assistance funds it receives directly on technical assistance; marketing and administration can account for no more than 30% of technical assistance funds.

manager will not issue a letter of eligibility without the receipt of an Ecology letter validating the water right(s) in question. Until a project is granted eligibility, the district is urged not to present the project proposal to the landowner as anything more than in the data collection phase. In those instances where final project design is cost prohibitive to utilize a districts technical assistance funds, the cost of final survey and design will be cost eligible for financial assistance dollars as a portion of the total project cost. Any expenses incurred by the landowner or district prior to the date of eligibility are not cost eligible for reimbursement under this program.

Once Ecology and the Commission approve the contract, financial assistance funds sufficient to complete the project will be unilaterally amended into the district's existing contract. Cost share recipients may request partial payment(s) up to 75% of the project's total cost share request amount listed in section III(E) of the contract. In order to receive payment, the recipient must provide the district with a completed Partial Payment Request Form and all applicable documentation (ex. Copies of receipts, invoices, statements, & etc.), as per Conservation Commission grants policies.

If an irrigator is a customer of an irrigation district or water association, the water transfer portion of the contract must be negotiated and signed with the water right holder.

If an irrigator leases the irrigated farm/field upon which the irrigation efficiency will be installed, the water transfer portion of the contract must be negotiated and signed with the water right holder.

Once the conservation district has Certified that the entire project, except for the WDFW fish screen, has been implemented and it has completed the Final Certification of Implementation, the district may voucher for the final 25% of the cost share request as final payment on the project.

Deleted: will, prior to vouchering for final payment on the each project, be responsible for ensuring that the Landowner's Trust Water Right Form (for temporary) or Application For Change (for permanent) has been processed into Ecology's Water Rights Application Tracking System (WRATS) program at its regional office. Only after the district verifies that the Trust Water Right Form or Application for Change actually appears in WRATS may a district

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How will final project cost be quantified?

Because local working group cost lists have shown to be inadequate in most eligible areas of the state with regards to the installation of irrigation systems, an equitable way should be used to determine fair and wise use of public funds; the competitive bid process is a good way to limit excessive spending and potential abuses of cost share dollars. For the purposes of the Irrigation Efficiencies Program, the competitive bid process will be used regardless of the total project cost or amount of cost share requested, and demonstration of its use by the landowner must be made to the district before cost share can be issued.

This process, at a minimum, should consist of three separate phases in order to insure a fair and equitable expenditure of public funds.

Phase one should consist of authoring and submitting to the public a request for proposal (RFP) based on the conceptual design assessment used for project eligibility. Solicitation may be done telephonically or by other acceptable means. The district should assist the landowner

by creating a bid evaluation document prior to their issuing an RFP in order to ensure consistent results. Criteria on this document could include items such as: Company ability, capacity and skill to provide the service; proposer's understanding of the project requirements; Cost; Business References; satisfactory record of past performance; and etc. Using this approach, the criteria may be weighted differently depending on the type and scope of project.

Phase two would consist of receiving and evaluating the proposals. Using a pre-established criteria, all proposals are weighted in an evaluation process. The district may choose to participate with the landowner to offer any technical assistance that might be relevant to the process. The evaluation document should clearly reflect criteria and weight in order to validate the selection process.

Phase three would consist of the selection process. Based on the outcome of the evaluation phase, a contractor/consultant should be selected.
The district should ensure that the bid process is fair and equitable and makes wise use of public funds.

How will irrigation consultants be selected?

If districts choose to use irrigation consultants, they must develop an RFQ process to evaluate them. Consultants that apply to be on the "qualified list" must be ranked using a standard form developed by the Conservation Commission. Preference will be given to NRCS Certified Contractors and Irrigation Association Certified Irrigation Specialists.

Commission criteria for evaluation of irrigation consultant qualifications include:

- Irrigation design experience for multiple crops;
- Water master planning experience (holistic management);
- Development and implementation of complete agricultural production systems;
- Familiar with water right permitting, etc.;
- On-farm storage experience;
- Irrigation management experience;
- Mapping, surveying, site assessment experience;
- Familiar with irrigation products and manufacturers;
- Experience with new, evolving technology; and,
- Agronomy experience.

How will contract compliance be checked?

The District is responsible for reporting compliance with the cost share portion of each landowner contract. Monthly on-site I&E sessions will be held with the landowner over the 12 month period following project completion. District staff must also ensure that compliance with the diversion screening portion of the agreement is adhered to where applicable. Ecology personnel are responsible for processing the net water savings of the project into trust.

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checking compliance with the water lease portion of each contract, and receipt of water meter reporting data as required by 173-173 WAC.

The Conservation Commission confirms completion of the project in compliance with the terms of the contract and with any conditions associated with the transfer of the net water savings to the trust water right program, such as the installation of flow meters. The Commission confirms the findings to the appropriate Ecology authority.

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How will policy questions be handled?

The Conservation Commission will convene a steering committee to oversee the program. Representatives from Ecology, CELP, NRCS, CD's, ID's, and the Legislature will be invited to participate.

How will the Governor's directive on Sustainability be worked towards?

All documentation submitted to the Conservation Commission, either to the Program Manager, or the Olympia office, must be printed on both sides of each piece of paper when copies are generated. Do not make extra copies in an attempt to comply with this program mandate. If copies are generated by an outside agency, or the nature of the documentation is such that double sided copies are not feasible, then an exception will be made in the interest of unnecessary copying. Districts are encouraged to cut down on unnecessary use of resources in this way in their everyday operations.

DEFINITIONS

Best management practices (BMPs) are defined as the following United States Department of Agriculture (USDA)/Natural Resource Conservation Service (NRCS) Practice Specifications; refer to the USDA/NRCS Field Office Technical Guide (FOTG) for details. Project requirements for the Water Flow Measuring Device BMP are further defined below.

- Irrigation Canal (320)
- Irrigation Erosion Control (716)
- Irrigation Regulating Reservoir (552A)
- Irrigation System (441/442/443)
- Irrigation Water Conveyance (428/430)
- Irrigation Water Management (449)
- Pumping Plant for Water Control (553)
- Tailwater Recovery (447)
- Structure for Water Control (587)
- Water Well (642)
- Water Flow Measuring Devices

Certification of implementation: means the forms included as Attachment B (partial payment) and C (final payment) on which NRCS, State Licensed Engineer, the district chair, and the recipient attest that implementation is complete and the BMPs were built to NRCS specifications.

Consolidated Application Form: The document is used for compiling and sharing project specific information between the entities and agencies associated with each Efficiencies project in its worksheet format. In its application format (signed and designated as such), it is used by he Conservation Commission as an application for eligibility and by the Ecology as an application for the transfer of the trust portion of the net water savings to the Trust.

Fish screen: a diversion device to allow passage of water from a water source into an irrigation water delivery system without allowing fish access. The design shall be approved by the Washington Department of Fish and Wildlife.

Deleted: Change application: an application for permanent transfer of a water right or claim to the Trust filed with Ecology pursuant to RCW 90.42. The application can also relate to purpose of use, place of use and point of diversion.¶
Trust Water Rights Form: an application for the temporary transfer of a water right or claim to the State's Trust Program filed with Ecology at the Regional Water Resources Office.¶

J. Water flow measuring device: Flow meters shall be installed on all diversions authorized for cost share improvements made to irrigation systems under this contract. These diversions shall have a flow meter installed capable of providing the instantaneous flow rate and total volume of water used over the period of recording.

These meter installations, whether source meters or measuring devices for individual properties shall be designed by a licensed engineer in the State of Washington and shall meet all of the requirements of the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. In addition to meeting the minimum flow meter installation requirements of 173-173 WAC, this contract shall require: 1) continuous recording of flow rate and volume equipment on all installations; 2) open channel flow measuring devices shall be designed by an engineer licensed in the State of Washington and 3) installation of meters for pressurized pipe flow shall be designed by an engineer licensed in the State of Washington or a person qualified in selection/design of meters; such as a manufacturer's representative. This equipment shall be capable of totalized readings of instantaneous diversion converted to acre feet per year. Due to unique installation limitations, limited exceptions to this continuous recording requirement may be approved jointly by the Conservation Commission and the Department of Ecology.

Instream flow: That flow established by administrative regulation in the Washington Administrative Code or, in areas where no such flow has been established, the natural flow of a river as modified by existing legal diversions of water or the operation of any storage facilities.

Net water savings: the difference between legal water use before and after the installation of the irrigation efficiency improvement.

Receipts: the written acknowledgement of the receipt of equipment and services and their cost related to the installation of irrigation efficiency improvements.

Cost share rate: the percentage of the total project cost to be reimbursed to the landowner by the State, as identified in the Executive Summary. The percentage of cost share may not exceed the percentage of saved water placed into the State's water trust.

Trust Water Right: any water right acquired by the state as part of this program that will be managed as part of the State's Trust Water Rights Program.

Senior Water Right: The basic principal of "first in time/ first in line" applies to Washington water rights seniority. Program specifically, any water right that: is generally not regulated against in most average rainfall years; is sufficient in seniority such that it can be protected within the primary reach. Supplemental rights must be carefully scrutinized here and may not be accepted without the water right that is supplemented also being entered into trust.

Diversion Reduction Agreement: a document, signed by the landowner and Ecology which contractually obligates the landowner to reduce the diversionary amount of the right in question to an amount not to exceed that amount of the right shown as historically and beneficially used minus the amount of saved water to be placed in the State's Water Rights Trust Program.

Primary Stream Reach: that portion of the stream/tributary from the point of diversion to the ultimate point at which any return flows reenter the public water body.

Technical Advisory Committee: a finite group of technical experts who review all technical considerations within the program. The most obvious function of the TAC is to review all project proposals, which require a rule exception to qualify, for their measure of environmental benefit and technical merit. The Commission and Ecology will always have a representative present at all meetings. Members presently include: Commission Program Manager, Ecology's Rights Reviewer, WDFW's Senior Biologist in the central region, an Ecology Engineer (present for Irrigation District project reviews), NRCS Ag. Engineer (present when irrigation infrastructure is being reviewed), and the Conservation District technician for the project under review.

Deleted: Project Eligibility Form: The Project Eligibility Form is a worksheet used to determine the environmental benefits of each irrigation improvement project. A threshold of required criteria is necessary for the project to qualify for funding. Worthy projects not meeting the threshold may be submitted to the Technical Advisory Committee for consideration on a case-by-case basis. ¶

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Also incorporated into the Form is an Executive Summary page which is used for tracking project specific criteria important to the program.

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